1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 9 AT SEATTLE 10 JAIME ALVAREZ ORNELAS, Case No. C07-1865-JLR-MAT 11 Petitioner, 12 REPORT AND RECOMMENDATION 13 A. NEIL CLARK, Field Office Director, U.S. Immigration and Customs Enforcement, 14 Respondent. 15 16 Petitioner Jaime Alvarez Ornelas is a native and citizen of Mexico. On November 19, 2007, 17 he filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his detention 18 by the U.S. Immigration and Customs Enforcement ("ICE"), at the Northwest Detention Center in 19 Tacoma, Washington. (Dkt. 8). On January 18, 2008, the Honorable Mary Alice Theiler issued a 20 Report and Recommendation, recommending that petitioner's habeas petition be dismissed, finding 21 that petitioner was lawfully detained pursuant to INA § 236(a), 8 U.S.C. § 1226(a), and that there 22 was no basis for the Court to order petitioner's release from custody. (Dkt. 19). On May 14, 2008, 23 the Honorable James L. Robart adopted the Report and Recommendation and dismissed the habeas 24 petition. (Dkts. 23 and 24). Petitioner appealed this Court's decision to the Ninth Circuit Court of 25 26 Appeals on May 30, 2008. (Dkt. 25).

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After this Court's ruling and before briefing was completed in the Ninth Circuit, the Ninth Circuit issued decisions in *Casas-Castrillon v. DHS*, 535 F.3d 942, 948 (9th Cir. July 25, 2008); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. July 25, 2008). On September 15, 2008, the government moved the Ninth Circuit to vacate the judgment in the instant case and remand the matter to this Court to consider the effect of those decisions on petitioner's habeas petition. On December 3, 2008, the Ninth Circuit granted the government's motion for vacatur and remand. (Dkt. 29). On February 11, 2009, this Court directed the parties to file supplemental briefing addressing the application of these cases to petitioner's habeas petition. (Dkt. 32).

On February 20, 2009, respondent filed Supplemental Briefing and Motion to Dismiss, indicating that petitioner was removed from the United States to Mexico on December 17, 2008. (Dkt. 34). Respondents assert that because petitioner is no longer detained by ICE, his habeas petition has become moot and should be dismissed. *Id.* Petitioner did not filed a response. (Dkts. 36 and 37).

For a federal court to have jurisdiction, "an actual controversy must exist at all stages of the litigation." *Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166, 1173 (9th Cir. 2002). "When a controversy no longer exists, the case is moot." *Id.* Because petitioner is no longer detained by ICE, the Court finds that petitioner's habeas petition should be dismissed as moot. *See, e.g., Cooney v. Edwards*, 971 F.2d 345, 346 (9th Cir. 1992) (holding that the District Court properly dismissed plaintiff's claims that had become either moot or unripe). Accordingly, I recommend that this action be dismissed. A proposed Order accompanies this Report and Recommendation.

DATED this 16th day of April, 2009.

s/ Mary Alice Theiler
United States Magistrate Judge